



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0073; FRL-9989-22-Region 4]

Air Plan Approval;

South Carolina: Revisions to Prevention of Significant Deterioration Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) revision submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on September 5, 2017, that seek to revise certain New Source Review (NSR) regulations regarding the Prevention of Significant Deterioration (PSD) permitting program. EPA is finalizing this action pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2018-0073. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking?

On September 5, 2017, SC DHEC submitted a SIP revision to EPA for approval that involves changes to South Carolina's NSR permitting regulations to make them consistent with federal requirements for NSR permitting, correct typographical errors, make internal references consistent, and update public noticing procedures.¹ These changes include revisions to NSR public notice requirements in SC DHEC Regulation 61-62.5, Standard No. 7 - "Prevention of

¹ Also on September 5, 2017, South Carolina submitted separate SIP revisions with: changes to Regulation 61-62.1, Section I - "Definitions" and Regulation 61-62.5, Standard No. 5.2 - "Control of Oxides of Nitrogen (NOx);" the adoption of Regulation 61-62.97 - "Cross State Air Pollution Rule (CSAPR) Trading Program;" and changes to the regional haze SIP. The SIP revision related to Regulation 61-62.97 (CSAPR) was previously approved on October 13, 2017 (82 FR 47939). EPA will address the remaining SIP revisions in separate actions.

Significant Deterioration (PSD) at sections (q) and (w)(4) to address the federal rule entitled “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs,” Final Rule, 81 FR 71613 (October 18, 2016) (also referred to as the e-Notice Rule). In this final action, EPA is approving the SIP revision that makes changes to South Carolina’s NSR regulations at SC DHEC Regulation 61-62.5, Standard No. 7 which applies to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA, with the exception of the portions of the SIP revision related to the e-Notice Rule. EPA has addressed the e-notice portions of the SIP revision in a separate action on December 14, 2018 (83 FR 64285).

EPA is approving changes submitted in South Carolina’s September 5, 2017, SIP revision to modify the PSD regulations to make minor edits for internal consistency and to adopt changes for consistency with EPA’s 2016 permit rescission rule entitled “Rescission of Preconstruction Permits Issued Under the Clean Air Act” Final Rule, 81 FR 78043 (November 7, 2016). On September 21, 2018 (83 FR 47855), EPA published a notice of proposed rulemaking (NPRM) proposing to approve the portions of South Carolina’s SIP revision described in Section II, of this preamble. The details of South Carolina’s SIP revision and the rationale for EPA’s actions are further explained in the NPRM. EPA received no adverse comments on the proposed approval.

II. Analysis of South Carolina’s Submittal

The September 5, 2017, SIP revision makes several changes to Regulation 61-62.5, Standard No. 7 at section (w) – entitled “Permit rescission” – to be consistent with the federal

provisions for rescinding PSD permits.² Paragraph (w)(1) currently states that PSD permits issued pursuant to Standard No. 7 remain in effect until they expire or are rescinded. This subparagraph is revised in South Carolina's submittal to clarify that section (w) is the only provision under which permit rescission is allowed. Next, paragraph (w)(2) is revised to remove the date restriction that limits rescission to PSD permits issued under PSD rules in effect on or before July 30, 1987. South Carolina's revised language is consistent with the federal Permit Rescission Rule, allowing for permit rescission if the permit meets the requirement of paragraph (w)(3). Finally, paragraph (w)(3) is revised to change the word "shall" to "may" to clarify that this provision does not create a mandatory duty for the State. This change is consistent with the Permit Rescission Rule at 40 CFR 52.21(w)(3).

The September 5, 2017, SIP revision also revises other paragraphs in Regulation 61-62.5, Standard No. 7 for consistency in formatting, to correct internal references, and to correct typographical errors. Section (b) is modified at paragraph (34), subparagraph (vi), to correct a typographical error in the definition of "Net emissions increase." Next, sections (w), (aa), and (bb) are revised to be in bold font for internal consistency. Finally, Standard No. 7 is revised to make internal references and formatting consistent by making changes in section (aa) at (aa)(1)(i), (aa)(9), (aa)(11)(i), and (aa)(14)(i). EPA finds that South Carolina's revised rules are consistent with federal requirements and CAA section 110.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation

² South Carolina also revised Regulation 61-62.5, Standard No. 7 at paragraph (w)(4) to address EPA's eNotice Rule. As discussed above, EPA has addressed this change in a separate action.

by reference of the SC DHEC regulatory paragraphs identified above in Section II within South Carolina Regulation 61-62.5, Standard No. 7, entitled “Prevention of Significant Deterioration,” state effective on August 25, 2017. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.³

IV. Final Action

This is a final action based on the proposed rule (see 83 FR 47855). For the reasons discussed above, EPA is approving the aforementioned changes to the South Carolina SIP, submitted on September 5, 2017.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

³ *See* 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120, “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition

for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 21, 2018.

Mary S. Walker

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

2. Section 52.2120(c), is amended in the table under the heading “Regulation No. 62.5 Air Pollution Control Standards” by revising the entry for “*Standard No. 7*” to read as follows:

§52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
Regulation No. 62.5	* * *			
* * * * *				
<i>Standard No. 7</i>	Prevention of Significant Deterioration	8/25/2017	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register]	The SIP does not include the August 25, 2017 state-effective version of Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)(1)(vii)(t). Instead, the SIP includes the June 25, 2005 state-effective version of these paragraphs, conditionally approved by EPA on June 2, 2008, and

			<p>fully approved on June 23, 2011.</p> <p>The SIP does not include Standard No. 7, paragraphs (b)(30)(v) and (b)(34)(iii)(d) because the state withdrew these paragraphs from EPA's consideration for approval on December 20, 2016.</p> <p>The SIP does not include the August 25, 2017 state-effective version of Standard No. 7, paragraph (b)(34)(iii)(c) because the state withdrew the August 25, 2017 state-effective version of this paragraph from EPA's consideration for approval on June 27, 2017. Instead, the SIP includes the June 25, 2005 state-effective version of this paragraph conditionally approved by EPA on June 2, 2008, and fully approved on June 23, 2011.</p>
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